

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC VALENCIA,

Plaintiff,

v.

VILLALOBOS and SGT. B. MENDOZA,

Defendants.

Case No. 1:25-cv-00097-HBK (PC)

ORDER NOTING VOLUNTARY
DISMISSAL UNDER FED. R. CIV. P.
41(a)(1)(A)(i) AND FED. R. CIV. P. 15(a) OF
CERTAIN CLAIMS AND DEFENDANTS

ORDER DIRECTING CLERK TO REVISE
DOCKET TO REFLECT ONLY NAMED
DEFENDANTS

(Doc. No. 8)

Plaintiff Eric Valencia, a pretrial detainee, is proceeding pro se and *in forma pauperis* in this action filed under 42 U.S.C. § 1983. On March 3, 2025, this Court issued a screening order on Plaintiff's Complaint. (Doc. No. 7 at 6-13). As detailed in this Court's March 3, 2025 Screening Order, the Complaint states a cognizable First Amendment retaliation claim against Defendant Villalobos and establishes a basis for supervisory liability against Defendant Mendoza, but fails to state any other cognizable claims. (*Id.* at 5-15). The Screening Order afforded Plaintiff the opportunity to (1) file an amended complaint; (2) file a notice under Federal Rule of Civil Procedure 41 and Rule 15 indicating that he is willing to proceed only on the claims the court found cognizable in its screening order; or (3) stand on his Complaint subject to the undersigned issuing Findings and Recommendations to dismiss the defendants and claims not

1 cognizable. (*Id.* at 15-16).

2 On March 12, 2025, Plaintiff filed a notice, signed and dated March 9, 2025, titled
3 “Plaintiff’s Notice to Stand on His Current Complaint and Proceed Only on His First Amendment
4 Retaliation Claim Against Defendant Villalobos and Supervisory Liability Claim Against
5 Defendant Mendoza, Thereby Voluntarily Dismissing Defendants Madera County, Pogue, and
6 Seaborn and Any Other Claims the Court Deem[ed] Not Cognizable.” (Doc. No. 8, “Notice”). In
7 the Notice, Plaintiff states he “chooses to stand on the complaint as screened and to proceed only
8 on those claims the court deem[ed] cognizable, effectively dismissing defendants Madera County,
9 Pogue, and Seaborn and the claims deemed not cognizable without prejudice under Federal Rule
10 of Civil Procedure 41(a)(1) and Rule 15.” (*Id.* at 2).

11 Plaintiff may voluntarily dismiss any defendant or claim without a court order by filing a
12 notice of dismissal before the opposing party answers the complaint or moves for summary
13 judgment. Fed. R. Civ. P. 41 (a)(1)(A)(i). Here, no party has answered or moved for summary
14 judgment. (*See* docket). Further, the Ninth Circuit recognizes that a party has an absolute right,
15 prior to an answer or motion for summary judgment, to dismiss fewer than all named defendants
16 or claims without a court order. *Pedrina v. Chun*, 987 F.2d 608, 609-10 (9th Cir. 1993).
17 Alternatively, the Court construes Plaintiff’s Notice as a motion to amend the Complaint under
18 Federal Rule of Civil Procedure 15(a). *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d
19 683, 687 (9th Cir. 2005) (Rule 15(a) “is appropriate mechanism” when a party is eliminating an
20 issue or one or more claims but not completely dismissing a defendant).


21 In accordance with Plaintiff’s Notice, Plaintiff’s Complaint will proceed only on his First
22 Amendment retaliation claim against Defendant Villalobos and his supervisory liability claim
23 against Defendant Mendoza. (*See* Doc. No. 8). Defendants Madera County, Pogue, and Seaborn
24 are voluntarily dismissed under Rule 41 and any other claims deemed not cognizable are
25 withdrawn under Rule 15. The Court will direct service upon Defendants Villalobos and
26 Mendoza by separate order.

27 Accordingly, it is **ORDERED**:

28 The Clerk of Court shall correct the docket to terminate Defendants Madera County,

1 Tyson Pogue, and Lt. Seaborn to reflect Plaintiff's notice of voluntary dismissal under Rule
2 41(a)(1) of these same Defendants.

3
4 Dated: March 13, 2025


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE